

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 8 2000

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYCommunications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

**OPPOSITION TO MOTION FOR
ACCEPTANCE OF SUPPLEMENTAL COMMENTS**

The Personal Communications Industry Association ("PCIA")¹ hereby respectfully opposes the *Motion for Acceptance of Supplemental Comments* recently filed by the U.S. Department of Justice and the Federal Bureau of Investigation.² In their *Motion*, the Department and FBI seek to amend their earlier *Petition for Reconsideration* in this proceeding³ – filed more than a year ago.

¹ PCIA is an international communications association dedicated to advancing seamless global wireless communications through its public policy efforts, marketing programs, international events, and educational programs. PCIA members comprise a broad base of business sectors in wireless voice and data.

² Motion for Acceptance of Supplemental Comments and Reply to Opposition to Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed November 29, 2000) ("Motion"). *See also* Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed November 14, 2000) ("Supplemental Comments").

³ Petition for Reconsideration of Section 105 Report and Order by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed October 25, 1999).

No. of Copies rec'd CV 9
List ABCDE

PCIA objects to this untimely attempt by the government to further modify the Commission's *Security Order*, which was issued on March 15, 1999 and has already been revised once by the Commission.⁴ The government's belated submissions are procedurally invalid. Moreover, the proposed amendments raise issues that have already been carefully considered by the Commission, and would impose additional and unnecessary burdens upon telecommunications carriers.⁵

I. THE GOVERNMENT'S UNTIMELY AMENDMENTS ARE PROCEDURALLY DEFECTIVE

Under the Commission's rules, a petition for reconsideration must be filed within thirty days of publication of a Commission's decision in the Federal Register, and all comments (including reply comments) on such petitions must be filed within another twenty-five days.⁶ On October 25, 1999, the Department and FBI filed their *Petition for Reconsideration* on the Commission's *Security Order*. Now, over a year later (long after the deadline for seeking reconsideration of the Commission's decision or even for filing comments on its *Petition*), the

⁴ Report and Order, *In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, FCC 99-11 (rel. March 15, 1999); Order on Reconsideration, CC Docket No. 97-213, FCC 99-184 (rel. August 2, 1999) ("Security Order"). The Commission's *Security Order* implements the system security regulations provided under Section 105 of the Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified at 47 U.S.C. § 1001 *et seq.*) ("CALEA").

⁵ Similar objections have been raised in filings by the Cellular Telecommunications Industry Association and AT&T Corp. See *Opposition to Supplemental Comments of the Cellular Telecommunications Industry Association*, CC Docket No. 97-213 (filed Nov. 22, 2000) ("CTIA Opposition"); *Response of AT&T Corp. to Motion for Acceptance of Supplemental Comments*, CC Docket No. 97-213 (filed December 5, 2000).

⁶ 47 C.F.R. §§ 1.429(d), (f) & (g).

government seeks to enlarge the scope of its original request. Under the Commission's rules, the appropriate period for making such filings has clearly expired.

Moreover, although the Commission's rules allow for supplements in extraordinary circumstances, the government's belated request for leave to file its *Supplemental Comments* fails to provide any explanation for why the expanded modifications sought by the Department and FBI could not have been included in the original *Petition*, nor why they should now be considered. If the Commission were to adopt the government's untimely, supplemental modifications, it will do so without having provided interested parties notice and an opportunity to comment on these additional burdens. Accordingly, the Commission should refuse to consider the government's *Supplemental Comments* (and its belated *Motion* for acceptance of those comments).

II. THE GOVERNMENT'S PROPOSED AMENDMENTS WOULD IMPOSE ADDITIONAL AND UNFOUNDED BURDENS ON TELECOMMUNICATIONS CARRIERS

Although the Department and FBI attempt to downplay the significance of the amendments they propose by claiming that they "might reasonably be thought implicit in the Commission's existing rules,"⁷ in reality, the proposed amendments are significant and would place additional and needless burdens on telecommunications carriers.

For example, the Commission's rules currently state that if a carrier amends its existing policies and procedures, it must file the amended documents with the Commission within ninety

⁷ Supplemental Comments, at 2.

days.⁸ The Department and FBI, however, request that the Commission amend its regulations to require that carriers update their policies and procedures “immediately” should there be any change concerning information regarding a carrier’s point of contact.⁹

The government’s proposal is both unnecessary and unreasonable. Carriers are already required to submit such information to the Commission in a timely fashion. Just last year, the Commission declared ninety days to be “a reasonable amount of time to incorporate modifications to already existing policies and procedures and file them with the Commission.”¹⁰ Moreover, the proposed amendment replaces a clear deadline (“ninety days”) with a confusing and subjective one (“immediately”). Carriers are cognizant of their obligation to update their systems security and integrity policies should there be an amendment of their existing policies and procedures. The government’s proposed amendment is simply regulatory overkill.

The Department and FBI also propose that the Commission amend its rules so that carriers report point of contact information using a single form or format.¹¹ The government contends that amending the Commission’s rules to require use of a standard form will “ensure that the point of contact designee can be contacted quickly” and “simplify each carrier’s reporting task, ensure more consistent reporting of point of contact information, and also facilitate the quick retrieval of the information by the Commission.”¹² The Commission’s current rules regarding point of contact information are more than sufficient. There is no

⁸ 47 C.F.R. § 64.2105(a).

⁹ Supplemental Comments, at 4.

¹⁰ Security Order, ¶ 56.

¹¹ Supplemental Comments, at 4.

¹² *Id.*, at 5.

suggestion in Section 105 that the filing of such information must be in a uniform manner or that the Commission is empowered to make it so. Moreover, the Commission consciously declined to adopt such specific “policies and procedures ... because it is not the Commission’s responsibility to ‘micromanage’ telecommunications carriers’ corporate policies.”¹³ The adoption of the government’s proposed Appendix A template,¹⁴ or any similar form, would be arbitrary and impose yet another, unnecessary filing obligation on carriers that have already complied with the Commission’s regulations.¹⁵

III. THE GOVERNMENT’S PROPOSED AMENDMENTS SEEK TO RELITIGATE ISSUES ALREADY CONSIDERED BY THE COMMISSION

Finally, many of the amendments requested by the Department and FBI raise issues that the Commission has already carefully considered as part of its extensive rulemaking in this proceeding. For example, as noted above, the Commission has already determined that ninety days is “a reasonable amount of time to incorporate modifications to already existing policies and procedures and file them with the Commission.”¹⁶ In fact, in comments filed on December

¹³ Security Order, ¶ 18.

¹⁴ Supplemental Comments, Appendix A (“CALEA Section 105 Compliance Manual Point of Contact Information”).

¹⁵ Moreover, as noted by CTIA in its *Opposition*, should the Commission ultimately decide to adopt the government’s proposed template, the Commission must be mindful of its statutory obligation to obtain approval from the Office of Management and Budget, as required by the Paperwork Reduction Act, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. § 3501 *et seq.*). CTIA *Opposition*, at 5-6.

¹⁶ Security Order, ¶ 56.

12, 1997 as part of the Commission's rulemaking, the government expressly endorsed such a ninety-day period.¹⁷

Similarly, the government's *Supplemental Comments* renew the FBI's repeated request to obtain access to information about carrier personnel. The Commission has previously rejected such requests from law enforcement and should do so again.¹⁸ In its *Security Order*, the Commission ruled that a requirement to provide such information was unnecessary and could "compromise a carrier's ability to maintain a secure system by identifying the personnel charged with effectuating surveillance functions."¹⁹ PCIA wholeheartedly agrees with the Commission's thoughtful, prior assessments of these issues.

IV. CONCLUSION

PCIA respectfully urges the Commission to reject the *Supplemental Comments* and *Motion* submitted by the government. The amendments proposed by the Department and FBI are flagrantly untimely and would impose more unnecessary and unfounded burdens upon telecommunications carriers. If the Commission were to adopt the government's last-minute modifications, it will do so without having provided interested parties notice and an opportunity

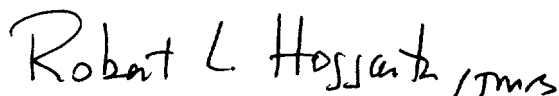
¹⁷ See Comments of the Federal Bureau of Investigation Regarding Implementation of the Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, at 35 (filed December 12, 1997) ("FBI 1997 Comments").

¹⁸ See Security Order, ¶ 25. See also FBI 1997 Comments, at 27 (requesting that the Commission implement rules requiring that "an official list of telecommunications carrier's designated personnel be created and available at all times to appropriate, designated law enforcement personnel, for any operational needs and any necessary security review or checks that may be required. Such list should include the individuals' names ... official titles, and contact numbers (telephone and pager).").

¹⁹ Security Order, ¶ 25.

to comment on these additional burdens. Moreover, the government has failed to present any new facts or law to justify a reversal of the Commission's previous, well-supported decisions. For all of these reasons, the Commission should reject the government's belated amendments.

Respectfully submitted,

Handwritten signature of Robert L. Hoggarth in cursive script.

Robert L. Hoggarth
Senior Vice President, Government Relations
Donald Vasek
Director, Government Relations
PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314
(703) 739-0300

December 8, 2000

CERTIFICATE OF SERVICE

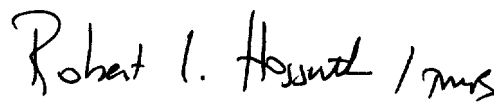
I, Robert L. Hoggarth, hereby certify that I have on this December 8, 2000 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing *Opposition to Motion for Acceptance of Supplemental Comments* to the following:

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Michael F. Altschul
Vice President and General Counsel
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

Martha Lewis Marcus
AT&T Corp.
Room 1115L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920

John Spencer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554


Robert L. Hoggarth